of the same amount by the defendant in an action upon the implied warranty. Equity to avoid circuity of action should leave the parties in their present position. *Dodd* v. *Wilson*, 4 Del. Ch. 399. It will be remarked that the same conclusion follows in a case where the debtor was solvent at the date of the assignment, but in a case where his insolvency intervened between the payment and the assignment a different result would be reached.

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CONSPIRACY TO INJURE IN BUSINESS. — Few questions have given rise to more litigation than those concerning combinations of capital or labor. A recent case before the Supreme Court of Wisconsin squarely presents the issue: Can acts, which are lawful for an individual, become unlawful or actionable, when done by a confederacy? *Hawarden* v. *Youghiogheny, etc., Co.*, 87 N. W. Rep. 472 (Wis.). Certain wholesale dealers in substantial control of the local coal supply and certain retail dealers agreed to trade exclusively with one another for the purpose, among others, of forcing out of the trade those retailers not in the combination. In pursuance of this agreement the defendant conspirators refused to sell to the plaintiff, whose business was thereby destroyed. On demurrer to the declaration the court decided there was a cause of action at common law.

There can be no doubt that each defendant singly had the legal right to refuse to sell to the plaintiff. Such discrimination could be exercised by an individual, although he had a practical monopoly. See *Brewster* v. *Miller*, 101 Ky. 368. The motive also is immaterial, for the right to discriminate is regarded as an absolute right, except in the cases of public servants such as carriers, telegraph companies, etc., under which category coal dealers do not fall. *Opinions of the Justices*, 155 Mass. 598. If an act is not tortious, when done by one it is said to follow logically that it cannot be tortious, when done by several, and on this reasoning, the decisions *contra* to the principal case are based. *Hunt* v. *Simonds*, 19 Mo. 583; *Bohn Mfg. Co.* v. *Hollis*, 54 Minn. 223 (*semble*).

But is it true that the concerted refusal to deal with a man is precisely the same act as the refusal of an independent individual? Andrews, J., in *Leathem* v. *Craig* declares, "Their commission [*i. e.* acts] by the concerted action of a number materially alters their character in this respect at least, that they thereby become more formidable, more oppressive, harder to resist, and therefore more generally dangerous; and this independent of motive." *Leathem* v. *Craig*, [1899] L. R. Ir. 2 Q. B. D. 667, 676; s. c. *Quinn* v. *Leathem*, [1901] A. C. 495. This distinction seems valid. Nor is the force of it destroyed by the fact that in some one particular instance an individual may have more power to injure than an associated number. It is not merely the addition of combination, but the alteration in the character of the acts done, which explains the liability of the defendants. Moreover, their agreement of necessity involves the inducement of each party to it by the others not to deal with the plaintiff. The right to influence another to the damage of a third person is, under the modern conception of the law of torts, unquestionably a qualified right the exercise of which, if exerted to injure a third person, demands justification. *Plant* v. *Woods*, 176 Mass. 492. See 8 HARV. L. REV. 1. Though the cases are in undoubted conflict, there is authority as well as reason to qualify the general proposition, that what an indi-

vidual may lawfully do, several may combine to do. *Gregory* v. *Duke of Brunswick*, 6 M. & G. 953; see 1 EDDY, COMB., §§ 474, 501. This qualification does not mean that every confederacy which causes pecuniary loss must respond in damages to the injured party. Fair business competition is an universally recognized justification. *Mogul Co.* v. *McGregor*, [1892] A. C. 25. The line between "fair" and "unfair" competition cannot be drawn rigidly, but it would seem that such facts as those in the principal case ought generally to amount to a justification. See *Bowen* v. *Matheson*, 14 Allen (Mass.) 499. The demurrer admitted that one purpose of the defendants was to injure the plaintiff. If that had been their sole purpose the combination would be unlawful. But in all "fair" competition the infliction of injury is contemplated and therefore intended, though as incidental to self-advancement. The decision is perhaps attributable to the prevalent feeling against monopolies as evidenced by Wisconsin legislation.

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THE TITLE TO CERTIFICATES INDORSED IN BLANK. — It is well known that even a thief can give a *bona fide* purchaser a good title to money, bank bills or currency in any form. On the other hand a thief can never pass good title to stolen chattels. The reason for this distinction rests in the fact that expediency requires that the title to any medium of exchange should pass with possession. There is an intermediate class of instruments, including, for example, certificates of stock payable to bearer or indorsed in blank. These instruments are not negotiable, a mere thief cannot make a valid transfer of them, and yet, unlike chattels, one entrusted with their possession can pass a good title. *Jarvis* v. *Rogers*, 15 Mass. 389; *Rumball* v. *Metropolitan Bank*, 2 Q. B. D. 194. The question as to what is a sufficient entrusting has arisen in rather a curious way lately in Massachusetts. The owner of two certificates of indebtedness indorsed in blank left them in a sealed envelope with brokers for safe keeping. The brokers, knowing of the contents, subsequently tore open the envelope, and pledged the certificates for their own debts. They were sold under this pledge to the defendant, who bought without notice, and who was then sued by the original owner in trover. The court was ready to apply the rule that one entrusted with possession could pass title if it had been found that such was the custom, for the rule rests on the theory that one who has given all the indicia of title to another cannot assert title against a buyer in good faith from the latter. But the court held that although there was evidence of entrusting the envelope there was no evidence of entrusting the certificates. *Scollans* v. *Rollins*, 60 N. E. Rep. 983 (Mass.). In support of this finding is cited the ancient doctrine of larceny by breaking bulk. The doctrine is that if a package of goods is delivered to a bailee, and he separates them, and disposes of them he commits larceny. *Commonwealth* v. *Brown*, 4 Mass. 580. Of course the difficulty in such a case is to find the taking of possession against the will of the owner, which is a necessary element of larceny. The doctrine is ordinarily explained by means of the fiction that the bailee in breaking bulk ends the bailment and by the same act takes possession wrongfully. 2 East, P. C., 695; 3 GREENL., Ev., § 162; *Commonwealth* v. *James*, 1 Pick. (Mass.) 375. It is true, under this view of the doctrine, that by a fiction the bailee subsequently lost possession, and